

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**JESSE J. BARNES,**

**Plaintiff,**

**vs.**

**9:19-CV-109  
(TJM/ATB)**

**ANTHONY ANNUCCI, et al.,**

**Defendants.**

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**Thomas J. McAvoy,  
Sr. U.S. District Judge**

**DECISION & ORDER**

Plaintiff, proceeding *pro se*, filed this action pursuant to 42 U.S.C. § 1983. He alleges that the Defendants, New York State prison officials and correction officers, violated his rights during his incarceration at Upstate Correctional Facility. With reference to the instant motion before the Court, Plaintiff alleges that Defendant Anthony Annucci, Acting Commissioner of the New York State Department of Corrections and Community Supervision, implemented and authorized officers' use of restraints that violated his constitutional right to be free of cruel and unusual punishment. Defendant Annucci seeks to dismiss such claims for failure to state a claim upon which relief could be granted. The Court referred the matter to the Hon. Andrew T. Baxter, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Report-Recommendation, dated June 3, 2021, recommends that the Court

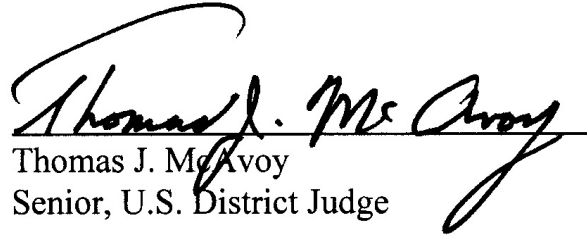
grant Defendant Annucci's motion to dismiss without prejudice. See dkt. # 238. Judge Baxter finds that Plaintiff has failed to allege with any particularity that Defendant Annucci personally engaged in conduct that violated Plaintiff's constitutional rights. Since Section 1983 does not provide for *respondeat superior* liability, Judge Baxter finds that Plaintiff has failed to state a claim upon which relief can be granted against Defendant Annucci.

Plaintiff filed objections to the Report-Recommendation. See dkt. # 248. When a party objects to a magistrate judge's Report-Recommendation, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff's objections, this Court has determined to accept and adopt the recommendation of Judge Baxter for the reasons stated in the Report-Recommendation. Therefore:

The Plaintiff's objections, dkt. # 248, to Judge Baxter's Report-Recommendation are hereby **OVERRULED**. The Report-Recommendation, dkt. # 238, is hereby **ACCEPTED AND ADOPTED**. Defendant Annucci's motion to dismiss, dkt. # 206, is hereby **GRANTED**. Any claims against Defendant Annucci are hereby **DISMISSED WITHOUT PREJUDICE** to repleading. Plaintiff's letter motion for leave to replead, dkt. # 258, is hereby **REFERRED** to Judge Baxter for further consideration in light of the instant Decision & Order.

**IT IS SO ORDERED.**

  
Thomas J. McAvoy  
Senior, U.S. District Judge

**Dated:** October 20, 2021